105 FERC ¶ 61,305
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Transcontinental Gas Pipe Line Corporation Docket No. RP04-57-000

ORDER TO RESPOND

(Issued December 19, 2003)

1. This order requires Transcontinental Gas Pipe Line Corporation (Transco) to explain how its currently effective tariff provisions on discounts at secondary points is consistent with Commission policy. This order benefits customers because it seeks to ensure that all pipeline tariffs provide customers the rights they are entitled to under the Commission's discount policy.

2. The Commission's discount policy, as enunciated in CIG/Granite State,[1] is that a pipeline's failure to provide a shipper's contract discount rate or the prevailing discount rate at a secondary point where the shipper is similarly situated to other shippers is discriminatory. In Horizon Pipeline Company, Docket No. RP02-153-004 (Horizon), the pipeline had proposed the following tariff provision:

> … if the Agreement of the shipper requesting the discount (or related discount agreement) specifies the discount rate to be paid and related rate provisions at that secondary point, then the Agreement (or related discount agreement) shall control.

3. The Commission held that this was contrary to Commission policy because under it the pipeline could grant a shipper a discount rate at a primary point, but provide in the contract with that shipper that a higher rate would apply at all secondary points, and the

[1] Colorado Interstate Gas Company, 95 FERC & 61,321 (2001); Granite State Gas Transmission, Inc., 96 FERC & 61,273 (2001), reh'g denied, 98 FERC & 61, 019 (2002).

Commission directed Horizon to remove this provision.[2] In its request for rehearing Horizon contended, among other arguments, that the Commission had approved tariff provisions in other interstate pipelines' compliance filings pursuant to Order Nos. 637, et seq., that was similar to Horizon's proposal here, including Transco's. Horizon cited to Section 40.2(b) of Transco's tariff which provides as follows:

> Request Required to Retain Discount at Secondary Point: In order to retain its discount at such an secondary point not expressly provided for in its discount agreement, Buyer must submit a timely request to retain its discount prior to a nomination to use the secondary point (whether through segmentation, capacity release or its own exercise of flexible receipt and delivery point rights). (emphasis supplied by Horizon).

4. In an order issued concurrently with this order, the Commission denied rehearing in Horizon, but granted clarification in part. Horizon Pipeline Company, 105 FERC ¶ 61,304 (2003). That order explained that the Commission adopted the CIG/Granite State policy on the ground that if shippers with a discount at their primary point would always lose that discount and pay a higher rate if they used their flexible point rights to move to a secondary point, including the use of secondary points for purposes of segmentation, this would restrict competition. The order held that tariff provisions of the type Horizon proposed that permit the parties to negotiate different rates to apply at secondary points than those that apply at the primary point would not be permitted because such provisions allow the pipeline to reconstruct the very barriers to competition that the CIG/Granite State policy seeks to remove.

5. However, the order recognized that parties have an interest in retaining the flexibility to negotiate rates that would apply at secondary points, as well as the rate at the primary point. To accommodate this interest, consistent with the Commission's reason for adopting the CIG/Granite State policy, the order clarified when a pipeline can negotiate discounted rates in its contract with a shipper that would apply at secondary points (the secondary point discount). The order stated that if the secondary point discount rate is equal to or lower than the primary point discount rate, then that negotiated discount rate may govern, regardless of what discounts the pipeline may have given to other shippers at the secondary point. However, to the extent that the pipeline and the customer included in their contract a secondary point discounted rate that is higher than the shipper's primary point discounted rate, the shipper will be entitled under the Commission's discount policy to the discount the

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[2] Horizon Pipeline Company, 103 FERC & 61,281 (2003).

pipeline gives to similarly situated shippers at the secondary point, but no lower than the primary point discount. This is necessary to assure that the pipeline does not use its authority to include in a contract negotiated secondary point discounted rates to reconstruct the barriers to competition that the CIG/Granite State policy seeks to remove.

6. The order noted that the Transco tariff provision cited above could be inconsistent with the ruling in Horizon. Thus, to ensure that all pipelines adhered to the Commission's discount policy, the order stated that separate proceedings would be instituted with Transco, as well as another pipeline with a similar provision, concerning the discount tariff provision to require it to explain how the provision in question operates, and why it is consistent with the Commission's discount policy. Accordingly, we direct Transco to explain how Section 40.2(b) of its tariff operates, and why it is consistent with the Commission's CIG/Granite State discount policy. If Transco concludes that Section 40.2(b) of its tariff is not consistent with that policy, it may file to revise its tariff consistent with the proviso in Horizon.

The Commission orders:

Transco is directed to file, within 15 days of this order, an explanation how Section 40.2(b) of its tariff operates, and how such operation is consistent with the Commission's CIG/Granite State discount policy.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.